The appellant acknowledged to the police that she wanted Tay to take revenge on Lai on her behalf for Lai's earlier treatment of her. She also admitted she knew that Tay was going to use the iron pipe to hit Lai.

Appellant's background

The appellant had a very unhappy background. She was married to someone who took her to Bangladesh where she was badly treated by her parents-in-law who virtually forced her to return to Singapore, leaving her children there.

Both the appellant and Tay had a history of mental illness. She had two spells as an in-patient at Woodbridge Hospital, one of seven weeks in 1971 and the other of six weeks in 1982. The psychiatrist's report by Dr Lim Yun Chin states:

> Her schizophrenic illness which had its onset in 1971 had relentlessly progressed to a chronic defect state characterized by impairment in her mental faculty and judgment. Her social behaviour also deteriorated. Such was her mental condition at the time of the alleged offence.
>
> However, her condition did not amount to unsoundness of mind as she was capable of knowing the nature and consequences of her act ... Her schizophrenic illness constituted an abnormality of the mind to the extent of impairing her mental responsibility for her actions.

Sentence and reasons

In assessing sentence, I took into account her background and also the psychiatrist's report that while her schizophrenic illness constituted an abnormality of mind that impaired her mental responsibility for her action, she was capable of knowing the nature and consequences of her act.

In addition, and more importantly, were these factors:

(a) it was on her request, if not her instigation, that Tay located and attacked Lai with her joining in;
(b) her desire was revenge for what Lai had done to her;
(c) she knew that Tay had a dangerous weapon in the form of an iron pipe 80 cm long;
(d) she was not an inactive witness but participated physically in the attack on Lai although only with her fists; and
(e) the attack on Lai took place about three and a half hours after the cause for her grievance against Lai.

In my view, this lapse of time was sufficient for reason to resume its seat, particularly in the light of the psychiatrist's report that she was capable of knowing the nature and consequences of her act.

Taking into account her background and the above factors, my view was that eight years' imprisonment was an appropriate sentence. I therefore sentenced her to eight years' imprisonment to commence from 14 March 1987, the date of her arrest.

Order accordingly.

Solicitors: *Nathan Isaac & Co; MPD Nair & Co.*

Reported by *Ng Sheau Jiuan*

Public Prosecutor v Chan Kim Choi

HIGH COURT (SINGAPORE) – CRIMINAL CASE NO 4 OF 1986
COOMARASWAMY AND CHAN SEK KEONG JJ
29 DECEMBER 1988

Criminal Law – Murder – Whether reasonable doubt exists in prosecution's case that accused had intention to kill deceased – Whether accused had discharged his burden of proving private defence or defences under Exceptions 1, 2 and 4 to s 300 of the Penal Code – Penal Code (Cap 103, 1970 Ed), ss 96, 300, Exceptions 1, 2 & 4 to s 300

Criminal Procedure – Cautioned statement – Whether cautioned statement can be substantive evidence of the truth of its contents when admitted as part of prosecution evidence – Criminal Procedure Code (Cap 68, 1985 Ed), s 122(5) & (6)

The accused was charged with the offence of murder. The evidence adduced by the prosecution consisted of the testimonies of witnesses at the scene of the incident, medical evidence on the stab wound and the cause of death of the deceased, and a voluntary statement made by the accused under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed). At the end of the prosecution's case, defence counsel made a submission that the defence had no case to answer as the prosecution had not adduced sufficient credible evidence which if unrebutted would warrant a conviction. Counsel for the accused also relied on certain statements in the accused's cautioned statement as evidence that the accused had stabbed the deceased when he had first been assaulted by the deceased and then threatened by his gang as well. It was submitted that these statements not only created a reasonable doubt on the prosecution's case but was also sufficient to establish the general exception of private defence and exceptions 1, 2 and 4 to s 300. Counsel also contended that where a cautioned statement was adduced as part of the prosecution's case, it was admitted as substantive evidence of the truth of the facts stated therein.

Held, convicting the accused:

(1) The court did not accept counsel's submission that a cautioned statement, when admitted as part of the prosecution's evidence, was substantive evidence of the truth of all the contents therein irrespective of the character of such statements. The law makes a distinction between inculpatory (or disserving) statements and exculpatory (or self-serving) statements. Exculpatory or self-serving statements, when given in accordance with s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed), may be admitted as part of the prosecution's evidence but not as to the truth of the contents thereof. The law of England is the same as the law of Singapore in this respect.

(2) There was nothing in the evidence adduced by the prosecution or elicited from the prosecution witnesses which had, at the end of the prosecution's case, created a reasonable doubt that the accused had intended to cause such injury as was sufficient in the ordinary course of nature to cause death. There was credible evidence that the accused had intended to stab the deceased in the neck and such stabbing was sufficient in the ordinary course of nature to cause death. Accordingly the defence was called for.

(3) The court is unable to conclude that the accused had discharged on a balance of probabilities, the burden of proving any circumstances which brought him within the general exception of right of private defence under s 96 of the Penal Code or any of special exceptions 1, 2 and 4 to s 300 of the Penal Code.

[*Editorial Note*: The accused has appealed to the Court of Criminal Appeal vide Criminal Appeal No 11 of 1988.]

Cases referred to

1 *Haw Tua Tau* v *PP* [1981] 2 MLJ 49 (follid)
2 *PP* v *Mohamed Noor Jantan* [1979] 2 MLJ 80 (refd)
3 *Packiam* v *PP* [1972] 1 MLJ 247 (refd)
4 *Chee Chiew Heong* v *PP* [1981] 2 MLJ 287 (distd)
5 *PP* v *Lim Chor Pee* [1981] 2 MLJ i (refd)
6 *Jayasena* v *The Queen* [1970] AC 618 (refd)
7 *The Crown* v *Muzaffar Hussain* (1943) 45 PLR 393 (refd)
8 *Mohamed Yasin bin Hussin* v *PP* [1976] 1 MLJ 156 (refd)
9 *Storey & Anwar* (1968) 52 CAR 334 (refd)
10 *The Queen* v *Leung Kam-Kwok* [1986] HKLR 188 (refd)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) ss 122(5), (6), 399
Penal Code (Cap 103, 1970 Ed) ss 96, 300, Exceptions 1, 2, 4 to s 300

Manjit Singh for the accused.
Ang Sin Teck for the Public Prosecutor.

Cur Adv Vult

Coomaraswamy J (presiding): The accused was tried before us on the following charge, ie:

> That you Chan Kim Choi on or about the 8th day of April, 1985 at about 9.00 pm at 'Big A' Fried Chicken Restaurant, Upper Serangoon Shopping Centre, Upper Serangoon Road, Singapore, committed murder by causing the death of one Lee Mui Kee, and you have committed an offence of murder, punishable under s 302 of the Penal Code (Cap 103).

At the conclusion of the case for the prosecution, defence counsel made a submission that the defence had no case to answer. We found, on the basis of the law as stated in *Haw Tua Tau*,[1] that the prosecution had made out a case against the accused which if unrebutted would warrant his conviction. Accordingly, we called on the accused, in the words of the standard allocution, to enter on his defence.

The accused elected to remain silent. However, he called two witnesses. At the conclusion of the case for the defence and after hearing and considering the final submissions of counsel for the defence and the deputy public prosecutor, we convicted the accused of murder and sentenced him to death.

We now give our reasons for convicting him.

The case for the prosecution

The evidence adduced by the prosecution consisted of the testimonies of witnesses at the scene of the incident, medical evidence on the stab wound and the cause of death of the deceased, and a voluntary statement made by the accused under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed).

The deceased, one Lee Mui Kee, died from a single stab wound inflicted on the left side of his neck. Prof Chao Tzee Cheng (PW3), a forensic pathologist, testified that he went to the 'Big A' Fried Chicken Restaurant at about 11 pm on 8 May 1985 in answer to a call from the police. There he found the deceased, already dead, lying in a pool of blood on the floor with a stab wound on the neck on the left side and another cut wound at the back of the right wrist. He did a post-mortem on the deceased the next day and made the following finding:

> Stab wound on left lower neck 6 cm long with the blunt end inside and sharp end outside plunging downwards and backwards from left to right side of the body at an angle of 45 degrees. It had transected the left common carotid artery, the oesophagus, the trachea and the right common carotid artery. It went over to the right side making a through and through wound on the right upper lobe of lung and ended up at the parietal pleura at the back of right 6th and 7th intercostal space cutting the 7th rib. The total depth was 24 cm. This was a fatal wound.
>
> Cut at the back of right wrist 3 cm. Superficial wound.

Prof Chao was of the opinion that in view of the depth of the stab wound and the injuries suffered by the deceased, the stab wound in the neck had been inflicted with considerable force. The whole of the blade of the knife had gone into the neck and had transected various internal parts thereof. He said that it would not be possible to save someone with such injuries and that the deceased would have died a few minutes after being so stabbed. He was also of the opinion that the cut wound on the wrist was a defensive wound. He said that the stab wound was consistent with having been inflicted by either of the two knives which were found at the scene of the incident.

The said two knives were found at the scene of the incident by Lee Kok Kian (PW19) who was the first police officer to arrive there and who preserved the scene of the incident. As shown in P20 the knife which was heavily stained with blood was slightly less than 24 cm in length whilst the other was just over 24 cm long.

The prosecution called five witnesses to testify what they had seen at the time of the incident. We summarize below their testimony.

(a) Lee Leong Huat (PW10), who was employed as a supervisor at the restaurant, said that at about 8.20 pm the restaurant was not crowded and that he had taken an order for a jug of beer and some chicken from the accused and the deceased who were sitting at table 2. He could not remember if they were later joined by any other person. At about 9 pm, whilst in his office, he heard a commotion and a scream in the restaurant. He came out of his office and saw a man (the accused) chasing another man (the deceased). The deceased was running towards table 9 and he had a lot of blood on his neck. The accused caught up with the deceased near table no 8 (see P51). PW10 saw the accused press his left hand against the chest of the deceased. The accused was about to stab the deceased when the latter fell onto the floor. The accused then ran away. He confirmed that he saw the two knives lying on the floor as shown in P17. He then called the police.

Counsel for the accused applied to impeach the credit of this witness on the ground that there was a discrepancy between his testimony in court that he saw only two persons sitting at table 2 and his statement made on 14 September 1985 wherein he had stated there were two other persons who had come into the restaurant and walked towards table 2. We allowed the application. When cross-examined about this discrepancy, the witness agreed he had made the statement and confirmed the truth of its contents, although he could not remember any details concerning the two men who came in. He was also cross-examined on another discrepancy between his testimony that when he first saw the deceased, the latter was at a point near to table 8 and his statement wherein he had said that the deceased was staggering from table 2. However, the witness was positive the accused had chased the deceased.

In our view, we were not in a position to conclude that the credit of this witness had been successfully impeached. Both his statement and his oral testimony were given a long time after the incident and it was not improbable that he could not have remembered in exact detail what crossed his vision as he came out of his office. However, there was consistency in his evidence about the accused having chased the deceased although he could not remember exactly where the chase had started from or where the deceased was when he first saw him. There was, however, evidence that the two knives were found lying near on either side of the body of the deceased. PW8 subsequently also testified that she saw the accused chasing the deceased and was about to stab the deceased when he collapsed, whereupon the accused threw away the knife and ran away. These two bits of evidence, unless disbelieved or rebutted, would tend to show that the accused had certainly ran after or in the same direction as the deceased. It would not be unreasonable for the witness to describe this as a chase. Accordingly, we did not think that the credit of this witness had been impeached.

(b) Toh Kwee Choo (PW7), another supervisor at the restaurant, also testified that she had been instructed by PW10 to and did serve a jug of beer and glasses to the deceased and the accused at table 2. She could not remember what shirt the accused was wearing. She also recalled seeing two or three persons coming into the restaurant later but she was unable to say whether these persons sat at table 2. Not long after their arrival, she heard noise of tables and chairs falling over. She was then standing at the service counter with her back to table 2. She turned round and saw the deceased running towards table no 9. He was then in front of the dispenser counter and there was blood on his neck. She also saw the accused holding a knife and chasing the deceased. At table 9, the deceased turned round. The accused then tried to stab the deceased a 'second' time but before he could do so, the deceased fell on the ground. The accused then ran out of the restaurant.

Counsel for the accused also applied to impeach the credit of this witness on the ground that in her previous statement made on 13 September 1985 she had not said anything about the accused chasing the deceased and trying to stab him. We allowed counsel to cross-examine the witness on the statement of 13 September 1985. In cross-examination, she explained that although she did not see the accused stabbing the deceased the first time, she thought that he must have done so as there were only two persons at table 2. However, she admitted that she had not, in her statement, disclosed that she saw the accused chasing the deceased and trying to stab him. Her reason for not having done so was that she was confused and frightened. She admitted that the investigation officer, Johnny Ho (PW28), had questioned her on whether she had seen the accused chasing or trying to stab the deceased and that she had not given a reply. PW28 subsequently testified that he had questioned her on these matters and that if she had given such answers, they would have appeared in her statement. In view of this, we considered that her evidence on the chase and the attempted stabbing was not reliable and we ignored it when calling for the defence.

(c) Chng Siew Choo (PW8), a waitress employed at the restaurant, said that at about 8 pm she saw two male Chinese sitting at table 2. She heard them talking in a normal fashion. At about 9 pm another two male Chinese came in and walked towards table 2. One of them asked her for an empty drinking glass. She brought it to table 2. The situation at table 2 remained normal. Half an hour later, while standing at the cashier's counter, she heard the noise of tables falling over from the direction of table 2. She then saw the deceased running from table 2 and

bleeding from the neck being chased by the accused. The accused tried to stab the deceased 'one more time' but did not do so as the deceased was 'dead' and leaning against table 9. The accused then threw away the knife and ran away. She could not recognize which knife the accused had been holding whilst chasing the deceased. The other two male Chinese who had come in later were standing there for a while and then left. In cross-examination, she said that table 2 was placed against and touching the wall and that the accused and the deceased had been sitting side by side, the deceased on the left of the accused, and the other two male Chinese sitting on the opposite side of the table. She also said that the deceased ran towards table 9 along the passage between the tables and the restaurant counter.

(d) Toh Bee Choo (PW11), another waitress at the restaurant, testified that she saw the accused and the deceased eating and talking at table 2. She also heard the sound of tables falling and later saw the deceased lying on the floor in a pool of blood with a wound in his neck and a knife as shown in P18. She could not recall anything more.

(e) Leo Jim Kee (PW9), the proprietor of the restaurant, was in his office when he heard a table and a chair falling. When the noise continued, he came out of his office into the restaurant and saw a man, his body dripping with blood, holding on to table 9 and about to fall over. He also saw a crowd of people standing up and leaving the restaurant. He then told his supervisor to call the police.

The testimonies of the witnesses who were not at the scene of the incident in so far as they have some bearing on the incident are summarized below.

(f) Lee Mui Tong (PW14), the brother of the deceased, testified that two or three weeks before the stabbing, the deceased had asked him for $1,000 to repay a loan shark called 'Lau Hee Low', which sum he had borrowed for the accused. PW14 was told by the deceased that the accused did not have money to repay the loan and that if the loan were not paid he, the deceased, would be assaulted by Lau Hee Low. PW14 further testified that he agreed to pay the said sum directly to Lau Hee Low but that his brother preferred to do it himself. He gave the money to the deceased who, he said, paid the money to Lau Hee Low the same day. The rest of his testimony was not material to the charge.

Under cross-examination, PW14 said that he did not know Lau Hee Low personally but had heard of him and that he did not know how to contact him. PW14 also did not know whether the deceased had actually borrowed money from Lau Hee Low or when the friendship between the accused and the deceased began.

(g) Ng Cheong Kee (PW17), a friend of the accused, testified that on 8 April 1985 at about 10 am, whilst he was having a drink at the Farrer Road Hawker Centre with his brother, Ng Kian Kee (PW15) and two neighbours, Ng Hock Chwee (PW16) and Tan Hang Li (PW18), the accused came and sat beside him. The accused was nervous. The accused then told PW17 that he had stabbed someone to death with a knife. The accused, who was wearing a colourful striped T-shirt, then told PW17 that he needed some money whereupon PW17 gave him $400. The accused then asked PW17 to lend him a shirt as his was stained with blood. PW17 then left the accused at the coffee stall and went to his mother's house nearby and returned with a green coloured T-shirt. He handed the said shirt to the accused who then went into the toilet and, a short while later, came out wearing the green T-shirt. The accused joined the group for a while and then left. After that, PW17 told PW15, PW16 and PW18 what the accused had told him.

PW17 and the accused first became friends when they were serving national service in the same unit during the period 1978/80. They used to go out together and also drank coffee at the same coffee stall. Since his discharge in 1980, PW17 had not gone out with the accused.

Under cross-examination, PW17 said that he could not recall whether the accused had told him of a fight at the Big A Fried Chicken Restaurant. He also did not notice whether the accused had any blood on him.

Our observation on the evidence of PW17 was that he was trying to deny his friendship with the accused after both of them had left national service. The friendship must have been continuing as otherwise the accused could not have gone to look for and found PW17 at the Farrer Road hawker stalls. Nevertheless, PW17's testimony that the accused had told him that he had stabbed the deceased was not seriously challenged in cross-examination. What was challenged was PW17's evidence that the accused had not told him that the stabbing occurred in a fight at the 'Big A'.

(h) Ng Kian Lee (PW15), in his testimony, confirmed the testimony of his brother (PW17) except that he did not hear what the accused had told PW17 although they were talking for about ten minutes. The testimony of Ng Hock Chwee (PW16) and Tan Hang Li (PW18) was substantially the same as that of PW15.

(i) Chan Kim Suan (PW29), the uncle of the accused, testified that he knew both the accused and the deceased, that they were very good friends from childhood days, that the deceased was a suspected gangster who was, at one time, released into his custody on probation. PW29 said that both the accused and the deceased were good boys although they were hot-tempered and would 'fight to the end' if tortured or

angered. He did not know why the accused would stab the deceased.

PW29 testified further that on the night of the incident, PW29 went to the scene immediately after he was informed by PW14 that the deceased had been killed in the restaurant. At the restaurant, PW29 met Insp Johnny Ho (PW28) and directed PW28 initially to 95Q Punggol Road and then to Blk 23 Hougang, to look for the accused. The accused could not be found at either place. PW14 then went home to 203 Lorong Buangkok at about 12 midnight. He found the accused waiting for him. He told the accused that the police was looking for him and asked why the accused was involved in a fight at the restaurant and whether he knew the deceased was dead. The accused became excited and exclaimed 'Ah! Mui Kee die?'. He then told PW29 that he was involved in a fight in the restaurant because of a loan of $2,000 which he and the deceased had borrowed from a moneylender, that the moneylender has a gang and that he bought two knives in order to fight as they had in the past been 'tortured' and beaten up in connection with their previous loans.

(j) Inspector Johnny Ho (PW28), the investigation officer, testified as follows. He arrived at the scene at 10.35 pm and took charge of the investigation. He instructed a sketch plan (P51) to be drawn and photographs (P1-P31) to be taken. He saw a trail of blood leading from the restaurant to the pavement outside the shopping centre in front of ABC coffee house. He collected the two knives, together with their paper covers, two crash helmets and also various blood swabs. During the course of the investigation, PW28 was able to establish the following facts:

(1) one Lim Beng Gee, a police officer, who had accompanied Chan Kim Suan (PW29) to 95Q Punggol Road and Blk 23, Hougang Ave 3 (where the deceased lived), found some fresh drops of blood on the void deck of Blk 23. Lim collected a piece of tissue paper stained with blood and a blood swab and a motorcycle crash helmet which articles were subsequently handed over to PW28. He also discovered that shortly after the stabbing, a man went to the house of the deceased and informed the deceased's mother that his son had been killed.

(2) John Masih (PW21), a police officer, had taken custody of the accused when the latter surrendered himself in the company of Chan Kim Suan (PW29) at about 2.50 am. PW28 interviewed the accused at about 3.40 pm and as a result of what the accused had said left his office at about 4.05 am with the accused to Farrer Road Hawker Centre where the accused showed him a blue plastic pail outside the 'Gents' toilet where he had thrown his blood-stained T-shirt earlier. Photographs were duly taken (P41 to P46).

(3) The medical examinations of the accused both before and after he gave a statement to the police under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed) showed that the accused's medical condition was normal and that he did not have any external injuries on his body.

(4) Various articles including the two knives, the blood swabs and the tissue paper were sent for analysis for blood group. A specimen of blood was also taken from the accused with his consent. The results were as follows (see P57):

(i) the blood swabs taken at the restaurant and on both knives was group O;

(ii) the blood on the tissue paper and the blood swab from Blk 23 was group B;

(iii) the blood group of the accused was A.

PW28 also testified that although he had instructed his officers to trace the identities of the other persons who had been seen at or near table 2 in the restaurant, the results were negative. However, under cross-examination, he admitted that his screening of the deceased for secret society affiliation disclosed that the deceased was in 1980 listed as a member of a secret society.

The court, in exercise of its power under s 399 of the Criminal Procedure Code (Cap 68, 1985 Ed), summoned Lim Sye Imm, the mother of the deceased, to give evidence. The court exercised this power in response to the submission of defence counsel that the police might have learnt the identity of the man who told her of her son's death but had not pursued their investigation diligently. Madam Lim testified that on 8 April 1985 at about 9 pm, a male Chinese came up to her flat and told her that her son had been stabbed to death at a shopping centre. She had never seen the informant before and was not told who had stabbed her son. The informant appeared normal and she did not see any blood on him. The informant then left and after that she received a telephone call from someone with a male voice who said that her son had been killed at the shopping centre at 5 milestone Upper Serangoon Road. Madam Lim also testified that the deceased had told her that he had borrowed money from a loan shark and that he had to sell his motor car in order to repay the loan.

The prosecution tendered in evidence, pursuant to s 122(5) of the Criminal Procedure Code, a statement made by the accused under s 122(6) thereof. The defence challenged the admissibility of this statement on the ground that the accused had been induced to make it by an alleged misrepresentation or promise by the police officers (ie they told the accused that they would treat the case as one of a gang fight). However, in the midst of the trial within a trial, counsel for the defence, on the instruction of the accused, accepted the statement as

having been voluntarily made. The statement was accordingly admitted in evidence. The statement read as follows:

> On 6 April 1985 the deceased 'Ah Tee' asked me whether I was prepared to pay the loan of $2,000. As I did not borrow this sum of money from the illegal moneylender I refused to repay him the loan. Ah Tee then told me to get someone to settle the matter with him. He had suggested that I could go to his house at Hougang, Avenue 3 on 8 April 1985 at 7.30 pm. At the stated time I went to his house to look for him, but he was not at home. I have carried two knives with me, I tucked them in my trousers at the left waist and covered them up with my T-shirt. I bought the knives from an emporium at Hougang, Avenue 6 before going to look for the deceased at his house. When I could not find him I went to the ground floor to wait for him.
>
> I wish to add that I brought the knives to his place because I expected that I would be confronted by the deceased and his friends when I was unable to give him any money. In fact prior to this meeting there were instances that I was assaulted by the deceased and his friends when I did not have money to give them. About half an hour later I saw the deceased coming towards the block. When I spotted him I called him. Ah Tee came to me and asked me to follow him to Upper Serangoon Shopping Centre. I agreed and sat on his motorcycle. On our way to the Upper Serangoon shopping centre I noticed that there were two motorcycles behind us. I believe that the motorcyclists behind are from his gang. On arrival Ah Tee led me to the 'Big A' fried chicken restaurant, both of us occupied a table in the restaurant. Ah Tee ordered a jug of beer and some chicken. The motorcyclists and the pillion riders did not enter the restaurant. They waited outside.
>
> Whilst we were still in the restaurant another four of the deceased's gang came into the restaurant, one of them sat with us while the others sat at the next table. When we were about to finish the chicken and the beer, Ah Tee asked me whether I had brought the $2,000 to him. When I answered him that I did not have money to give him even I agreed to pay the loan. On hearing what I said Ah Tee was unhappy and gave me a punch. I managed to dodge away but I was still hit slightly by the punch on my right cheek near the eye. After which Ah Tee and his gang stood up and came towards me, before they could do anything I whipped out a knife from my trousers and stabbed Ah Tee with it. I remember stabbing the deceased once. I then saw one of his gang members came forward. I immediately whip out another knife to attack him. I did not know whether I had stab that person or not. At the same time I saw Ah Tee collapsed onto the ground. I immediately threw the knife which I was holding and fled.
>
> From the scene I took a taxi to my friend's house at Farrer Road to borrow a shirt from my friend. I changed into a fresh clothing and sat in the Farrer Road hawker centre for a while. After I had a cup of tea at the hawker centre I took a taxi to Ponggol and went into hiding. In my uncle's house I consider the matter again and decided to surrender myself to the police, I then requested my uncle to send me to the Paya Lebar Police Station where I surrender myself. That is all I have to say.

The above is a summary of the material evidence adduced by the prosecution at the close of its case.

Defence counsel made a long submission that the accused should not be called to enter on his defence as the prosecution had not adduced sufficient credible evidence which if unrebutted would warrant conviction. Counsel relied on three grounds. The first was the narrow ground that there was no credible evidence that the accused had stabbed the deceased in the neck. No witness had testified to that fact. The accused had in his cautioned statement admitted to stabbing the deceased but as there was evidence that the deceased also had a cut wound on his arm, counsel suggested that the accused's admission could refer to the second wound rather than the first. We rejected this submission. To our mind, there was credible evidence that the accused had stabbed the deceased in the neck. The cut wound on the deceased's arm was a defensive wound and was consistent with an attempt to ward off the stab which landed on the neck. The evidence showed that no one else in the restaurant but the accused had a knife on him. Similarly, no one else was seen to have stabbed the deceased. It would be wholly unreasonable for the court to contemplate that the wound in the neck could have been inflicted by any of the deceased's friends.

The second ground was that the prosecution had failed to produce credible evidence that the stabbing by the accused was done with the intention of causing (i) death; or (ii) injury as the accused knew to be likely to cause death or was sufficient in the ordinary course of nature to cause death.

Counsel submitted that the fact that the deceased had died from the stab wound did not necessarily mean that the accused had intended to cause his death as the accused might not have intended to inflict that particular injury. It was also said that there was no motive for the killing, that none had been shown to have existed and that if the accused had intended to kill the deceased, he could have done so earlier as he had the opportunity of doing so at the void deck of Blk 23.

Counsel also relied on the statements in the accused's cautioned statement as evidence that the accused had stabbed the deceased when he had first been assaulted by the deceased and then threatened by his gang as well. It was submitted that these statements not only created a reasonable doubt on the prosecution's case but was also sufficient to establish the general exception of private defence or one or more of the special exceptions to s 300 of the Penal Code.

The statements in the cautioned statement relied on by counsel for the defence were as follows:

(1) prior to the incident, the accused had been assaulted by the deceased and his friends when he did not have money to give them;

(2) prior to his meeting the deceased on 8 April 1985, the accused bought two knives on the expectation that he would be confronted by the deceased and his friends;
(3) he met the deceased at the ground floor of the deceased's flat and agreed to follow the deceased to the 'Big A' restaurant; he sat on the deceased's motorcycle;
(4) they were followed by two motorcycles whose riders belonged to the deceased's gang;
(5) four of the deceased's gang came into the restaurant while he and the deceased were drinking and eating;
(6) the deceased gave him a punch which hit him slightly on the left cheek;
(7) the deceased and his gang stood up and came towards him whereupon he took out a knife and stabbed the deceased; when one member of the gang came forward, he took out the other knife to attack him.

This submission raised the issue as to whether or not statements made by an accused in a cautioned statement were admissible in evidence as the truth of the facts stated therein. Counsel contended that this was the law in Singapore, that where a cautioned statement was adduced as part of the prosecution's case, it was admitted as substantive evidence of the truth of the facts stated therein: counsel referred to the following authorities: (i) *PP* v *Mohamed Noor Jantan*;[2] (ii) *Packiam* v *PP*;[3] (iii) *Chee Chiew Heong* v *PP*;[4] (iv) *PP* v *Lim Chor Pee*[5] and (v) an article 'The Admissibility and Effect of Exculpatory Statements in Criminal Cases' by Stanley Yeo Meng Heong published in [1981] 2 MLJ lxxi.

Counsel further contended as follows:

(a) the defence was entitled, without the accused having to adduce evidence, to rely on the prosecution's evidence to create a reasonable doubt in the mind of the court as regards the absence of one or more of the ingredients of the offence: see *Jayasena* v *The Queen*[6] at p 626 C-D;
(b) likewise, the defence was entitled to rely on the prosecution evidence to discharge the burden, which was on the accused, of proving the existence of circumstances bringing his case within any of the general exceptions or the special exceptions in the Penal Code: see *The Crown* v *Muzaffar Hussain*;[7]
(c) the cautioned statement of the accused had created a doubt as to whether the accused had the requisite intention to kill the deceased or to cause such bodily injury as the accused knew to be likely to cause death or was sufficient in the ordinary course of nature to cause death: *Mohamed Yasin bin Hussin* v *PP*;[8]
(d) the cautioned statement was sufficient to enable the accused to discharge the burden of proving the general exception of private defence and exceptions 2, 4 or 1, in that order, to s 300.

We considered these submissions and agreed that an accused was entitled to rely on any evidence adduced by the prosecution to raise a reasonable doubt as to the prosecution's case as well as to establish his own. In *Jayasena* v *The Queen*,[6] Lord Devlin in delivering the judgment of the Privy Council said:

> ... But it must be remembered that the evidence on which the accused relies, when an issue of provocation or private defence is raised, may go to challenge the prosecution's case as well as to establishing his own. The present case, as Mr Gratiaen has said, is a clear case of confession and avoidance; the defence admitted the intention to kill and relied entirely upon private defence. It is, however, much more frequent for an accused to deny the intention. He will say that he did not intend to kill or cause serious bodily injury but that anyway he was acting in self-defence. Likewise provocation and accident often feature together in an accused's story. In such a case it is not only proper, but may be necessary, for the judge to remind the jury that the burden of establishing intention beyond a reasonable doubt rests always on the prosecution. The point has recently been before the Supreme Court of India in relation to the defence of insanity. In *Dahyabhai* v *State of Gujarat* [1964] 7 SCR 361, Subba Rao J, at p 365, pointed out that evidence that fell short of proof of insanity might yet raise a reasonable doubt about the existence of the requisite intention. In *Bhikari* v *State of Uttar Pradesh* [1965] 3 SCR 194, Mudholkar J said, at p 198:
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> 'If upon the evidence adduced in the case, whether by the prosecution or by the accused, a reasonable doubt is created in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused, he would be entitled to be acquitted. This is very different from saying that the prosecution must also establish the sanity of the accused at the time of commission of the offence despite what has been expressly provided for in s 105 of the Evidence Act.'
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> Their Lordships respectfully agree with this observation.

In *The Crown* v *Muzaffar Hussain*,[7] Sir Abdul Rahman J said:

> Once the prosecution is found to have established that an offence was committed by the accused the burden of proving the existence of circumstances bringing his case within any of the general exceptions in the Penal Code or with any special exception contained in any other part of that Code lies on the accused and the court has to presume the absence of such circumstances. Thus the burden of proving that the accused had acted in exercise of the right of self-defence which is in the nature of an exception is on him. It is true that this burden can be discharged otherwise than by producing defence evidence; but in those cases the version of the accused must be proved to have been established or in any case prima facie made out either by the prosecution evidence or by circumstances proved on behalf of the prosecution or elicited by the accused in his cross-examination of the witnesses for the prosecution. It cannot be disputed that the accused need not be called upon to establish right of self-defence unless the prosecution has succeeded in proving a case. But in a case where it has succeeded in making out the main facts, the prosecution cannot be thrown out merely because the prosecution evidence is to be regarded as unreliable on a few points.

However, we did not accept counsel's submission that a cautioned statement, when admitted as part of the prosecution's evidence, was substantive evidence of the truth of all the contents therein irrespective of the character of such statements. We did not think that the authorities cited by counsel supported his submission nor did we agree with such authorities if they did. In our view, the law makes a distinction between inculpatory (or disserving) statements and exculpatory (or self-serving) statements.

In *PP* v *Mohamed Noor Jantan*,[2] the accused was charged with unlawful possession of an offensive weapon. He made a cautioned statement under s 75 of the Internal Security Act 1960 (which was, in terms, similar to s 122(5) of the Criminal Procedure Code) that he had bought the knife from Changkat Stadium from which statement it could be inferred (as the court did) that he had the weapon for a lawful purpose. The prosecution decided not to produce this statement but was ordered to do so by the court. The accused was acquitted. The deputy public prosecutor appealed on the ground that the cautioned statement was not admissible in evidence. The High Court held that it was admissible in evidence in these words (at p 81):

> In the normal course of things a prosecutor who anticipates that a cautioned statement would prove useful for just such a purpose would produce it during the course of the prosecution case, and wait for the accused person to testify so that he would have available a useful weapon with which to shake his credit. Those words, however, do not restrict the admissibility to such purpose only, and since the statement is substantive evidence defence is at liberty to ask for and secure its admission during the course of the prosecution case. It follows that if after considering the cautioned statement and such other evidence as the prosecution had already adduced, the court finds that there is prima facie no case to answer, the court should of course acquit the accused at this stage.

We were unable to find anything in this passage or any part of the judgment to suggest that the judge had accepted the exculpatory part of the cautioned statement as true simply because the cautioned statement was admitted in evidence.

In *Packiam* v *PP*,[3] the first appellant, Packiam, had been convicted of voluntarily disposing of stolen property and the second appellant had been convicted of dishonestly retaining stolen property. The prosecution's case was based primarily on the testimony of a police inspector that when the second appellant produced the box and the things in it, he had said that the things were brought by Packiam for him to keep. On appeal, the court held that the statement was inadmissible in evidence as a confession because it had been given not in compliance with s 26 of the Evidence Ordinance. In the course of his judgment, the judge said:

> The question therefore to be considered is whether it is admissible. If it is sought to be admitted as a confession by the second appellant, it is not in compliance with s 26 of the Evidence Ordinance and it is in violation of s 25. See also: *Lee Yew Seng & Ors* v *PP*, at p 216. But in its context it is clearly not a confession in the sense of an admission by the second appellant that he had received the goods but there was nothing in this admission to indicate that he had obtained such possession of the stolen articles and acquired such a knowledge of their origin that he should be said to have dishonestly retained them. As I read and understood the words, they were nothing more than an admission that he was constituted a bailee of these goods and in my view without any evidence that he knew of their dishonest origin, he could not be said to have been dishonestly in possession.

In his article 'The Admissibility and Effect of Exculpatory Statements in Criminal Cases', an academic writer relied on this passage as additional support for his thesis that exculpatory statements made by an accused, when admitted as evidence, was evidence of the truth of its contents. The writer says (at p lxxiv):

> It will be suggested here that unlike the English position, the statutory provisions in Singapore and Malaysia enable exculpatory statements to be admissible for all purposes. In particular, such statements are regarded as substantive evidence, that is, evidence of the truth of what is contained in them. Those statutory provisions discussed on the issue of admissibility will also be relied on here.
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> Section 21(3) of the Evidence Act enables an admission to be proved by or on behalf of the person making it if it is relevant otherwise than as an admission. There can be little doubt that the phrase 'to be proved' denotes that the facts contained in the statement will be treated as substantive evidence. Illustration (d) of the section supports this contention. The accused's statement that he refused to sell stolen goods below their value can be admitted as showing that he did not know that the goods were stolen. Similarly in the Malaysian decision cited earlier, *Packiam & Anor* v *PP*, the second appellant's statement was considered as nothing more than an admission that he was a bailee of the stolen articles. The court then held that, without there being any evidence that he knew of their dishonest origin, the second appellant could not be said to have dishonestly retained the said articles. This conclusion could only have been arrived at by treating the facts in the statement as true.

In our view, *Packiam's* case[3] did not support the writer's thesis nor counsel's submission. In that case the judge took the view that the statement was not a confession in the sense of admitting guilt but if it were a confession it was not admissible at all. In fact, the judge held that the statement was inadmissible and, there being no other evidence against both the appellants, quashed their conviction.

In *Chee Chiew Heong* v *PP*,[4] the accused was charged with unlawful possession of a dangerous drug. The drug had been found next to her while she was sleeping in the compartment of a train which was travelling to Kuala Lumpur. After her arrest, she gave a cautioned statement in which she stated that she had

been given a package by her husband's friend to deliver to his relatives. She was told the package contained dried prawns. She thought the contents felt like dried prawns and accordingly did not open the package. The cautioned statement was put in by the prosecution as part of its evidence. The court disregarded the statement and convicted her. On appeal to the High Court, the conviction was quashed on the ground that the statutory presumption that possession of the container in which the dangerous drug was found was deemed to be possession of the drug itself had been rebutted by the cautioned statement. The judge appeared to have accepted the exculpatory statements of the accused as evidence of the truth. But there was no argument on this point and the ruling was made on the basis that the statements had been admitted as part of the prosecution's case. Accordingly, we did not regard this case as an authority for counsel's proposition.

In *PP* v *Lim Chor Pee*,[5] the accused was charged with criminal breach of trust of clients' moneys. The senior district judge acquitted the accused at the end of the prosecution's case as he was not satisfied that the prosecution had proved that the funds in question belonged to the clients or that the accused had a dishonest intention in transferring them abroad. The judge dealt with the cautioned statement of the accused as follows:

> The prosecution has tendered as part of the evidence, the statements made by the accused pursuant to s 121(6) of the Criminal Procedure Code (exh P18 and P19) explaining the reason why he transferred the sum of money in question to London. These statements, though unsworn, are admissible in evidence and since they are substantive evidence, I am of the view that it is open to this court to consider them at this stage of the proceedings (see *PP* v *Mohamed Noor Jantan* [1979] 2 MLJ 80). It is for this court to consider whether his explanation is or might be true in the light of all the other evidence in order to determine if a prima facie case has been made out by the prosecution (see *Storey & Anwar* (1968) 52 CAR 334) ...
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> I have carefully considered the accused's statements in the light of all the other evidence, both documentary as well as oral and whilst his use of the client account to effect the transfer of funds to London appears to be in breach of the Rules, I cannot say that there can be inferred a dishonest intention on his part when he did so, being satisfied that they are in all probability true.

The Public Prosecutor appealed against the acquittal, but the Chief Justice dismissed the appeal.

It is clear to us that in *Lim Chor Pee's* case,[5] the district judge did not accept the accused's explanation given in his cautioned statement as true simply because it was admitted as part of the prosecution's evidence. He clearly stated that the explanations must be considered in the light of all the other evidence. The district judge referred to the decision of the Court of Appeal in *Storey & Anwar*.[9] In that case, the police had found on entering the defendant's flat a large quantity of cannabis. In a voluntary statement not on oath the defendant gave the explanation that it belonged to a man who had brought it into her flat against her will and the explanation, if true, would have afforded a complete answer to the charge. At the close of the case for the prosecution a submission was made by the defence that there was no case to answer. The judge overruled this submission and called for the defence. The defendant elected not to give evidence. The trial judge left the issue as to the truth or otherwise of the accused's explanation to the jury. The accused was convicted. The Court of Appeal held that the judge's ruling was correct. In delivering the leading judgment of the court, Widgery LJ said:

> The court has given careful consideration to this important point. We think it right to recognize that a statement made by the accused to the police, although it always forms evidence in the case against him, is not in itself evidence of the truth of the facts stated. A statement made voluntarily by an accused person to the police is evidence in the trial because of its vital relevance as showing the reaction of the accused when first taxed with the incriminating facts. If, of course, the accused admits the offence, then as a matter of shorthand one says that the admission is proof of guilt, and, indeed, in the end it is. But if the accused makes a statement which does not amount to an admission, the statement is not strictly evidence of the truth of what was said, but is evidence of the reaction of the accused which forms part of the general picture to be considered by the jury at the trial.
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> Accordingly, in our judgment, in this case the fact that the cannabis was on the applicant's bed in her flat was in itself some evidence of possession to go to the jury. Her unsworn explanation, although, if true, it would have been a complete answer to the charge, did not cancel out or nullify the evidence which was provided by the presence of the cannabis. It was ultimately for the jury to decide whether that explanation was or might be true, and it was not for the judge necessarily to accept it at the stage when he was considering the submission. In the event therefore, we have come to the conclusion that the learned judge was entitled to and right to leave this matter to the jury and not to withdraw it from them merely because the accused's unsworn explanation would, if true, have been a complete answer to the charge.

In *The Queen* v *Leung Kam-Kwok*,[10] a similar issue arose in a trial in Hong Kong. The Hong Kong Court of Appeal appeared to have suggested that in Hong Kong exculpatory statements of an accused should be admissible as evidence of the truth of their contents. The Privy Council on appeal re-stated the law of England in these words:

> ... when considering whether the appellant's defence had been properly placed before the jury, the Court of Appeal made certain observations upon the evidential status of the appellant's several statements. The appellant, as already stated, did not go into the witness box. He had admitted responsibility for the killing in those statements but claimed that he had had no intent to kill and that he had fired upwards as a warning. The learned commissioner made no

comment upon the appellant's failure to give evidence though, in their Lordships' view, he might well have done so. But the Court of Appeal, following an earlier decision of that court in *Cheng Chiu* v *The Queen* [1980] HKLR 50, appears to have treated the part of his statements concerned with his lack of intention as evidence of their truth even though they were not made on oath before the jury and were to this extent what have been called in this context 'self-serving' statements. In their judgment in *Cheng Chiu* the Court of Appeal considered a number of relevant English decisions some of which the court suggested ought not to be followed in Hong Kong.

Their Lordships respectfully suggest that the position resulting from those English decisions is not as complicated as the Court of Appeal there appeared to have thought. If an accused person in a statement not made on oath in court denies his guilt, saying, for example, 'I am not guilty: I was not there' and no more, that statement is not evidence of the truth of his absence from the scene of the crime and thus of the truth of his alibi. But if such a statement consists partly of an admission and partly of an explanation, for example, 'I shot him: it was an accident' or 'I shot him: I was provoked', the admission is plainly admissible and common fairness requires that the entirety of the statement should be admitted so as to show the precise context in which the admission was made, even though what is said by way of explanation or excuse is not evidence of its truth. Where the accused goes into the witness box and repeats the explanation or excuse on oath there is no problem. Where he does not go into the witness box it behoves the trial judge, when dealing in his summing up with the admission, in common fairness to the accused, also to refer to the accompanying explanation or excuse, adding if he thinks fit to do so that that explanation or excuse has not been supported by evidence on oath before the jury. It is then for the jury to evaluate the admission and the unsworn explanation or excuse as they think fit.

So to state is little more than to repeat and adopt the statements succinctly and correctly made by James LJ when giving the judgment of the Court of Appeal (Criminal Division) in *R* v *Donaldson & Ors* [1977] 64 Cr App R 59 at p 65:

'In our view there is a clear distinction to be made between statements of admission adduced by the Crown as part of the case against the defendant and statements entirely of a self-serving nature made and sought to be relied upon by a defendant. When the Crown adduces a statement relied upon as an admission it is for the jury to consider the whole statement including any passages that contain qualifications or explanations favourable to the defendant, that bear upon the passages relied upon by the prosecution as an admission, and it is for the jury to decide whether the statement viewed as a whole constitutes an admission. To this extent the statement may be said to be evidence of the facts stated therein. If the jury finds that it is an admission they may rely upon it as proof of the facts admitted. If the defendant elects not to give evidence then in so far as the statement contains explanations or qualifications favourable to the defendant the jury, in deciding what, if any, weight to give to that part of the statement, should take into account that it was not made on oath and has not been tested by cross-examination.

When the Crown adduces evidence in the form of a statement by the defendant which is not relied on as an admission of the offence charged such a statement is evidence in the trial in that it is evidence that the defendant made the statement and of his reaction which is part of the general picture which the jury has to consider but it is not evidence of the facts stated.'

Their Lordships therefore regret that they are unable to agree with what was said in *Cheng Chiu* in the passage quoted by the Court of Appeal in the instant case.

In our view, the evidential status of exculpatory or self-serving statements in Singapore is equally clear. Such statements when given in accordance with s 122(6) of the Criminal Procedure Code may be admitted as part of the prosecution's evidence, but not as to the truth of the contents thereof. They are admissible on the ground, as the Privy Council has put it, that 'common fairness requires that the entirety of the statement should be admitted so as to show the precise context in which the admission was made'. We were of the view that the law of England is the same as the law of Singapore in this respect. The terms of s 122(6) of the Criminal Procedure Code do not suggest any more than that what the accused is being asked to disclose is the fact or facts on which he intends to rely in his defence in court. What he says in order to exculpate himself cannot be admissible as the truth because it is self-serving and also because it is not necessarily consistent with other facts that may be established by the prosecution in the course of the trial.

Accordingly, we were not prepared to accept, in a submission of no case to answer, the contention of counsel for the defence that the explanations given by the accused in his cautioned statement were true. Without those explanations (which are set out on pp 409-410), the evidence adduced by the prosecution at the end of its case showed that the accused had brought with him two knives for a meeting with the deceased, that he stabbed the deceased whilst they were having drinks or eating, that the accused was seen chasing the deceased after having stabbed him, and that the deceased died from a stab wound inflicted with considerable force. There was evidence that two or three of the deceased's friends were present at the restaurant and that at least two of them had sat at table 12 opposite the accused and the deceased who were sitting side by side. Beyond that, there was no evidence that the deceased had started the fight by delivering a blow to the accused or that the deceased and his gang had advanced menacingly on the accused. There was evidence of a commotion, of shouting and noise of table and chair overturning. Shortly after the incident, an unidentified male Chinese went to see the deceased's mother and told her of the stabbing. Fresh drops of blood and a motorcycle crash helmet were found on the void deck of the flat where the deceased had lived.

To our minds, there was nothing in the evidence adduced by the prosecution or elicited from the prosecution witnesses which had, at that stage of the proceedings, created a reasonable doubt that the accused had intended to cause such injury as was sufficient in the

ordinary course of nature to cause death. There was credible evidence that the accused had intended to stab the deceased in the neck and such stabbing was sufficient in the ordinary course of nature to cause death. Accordingly, we called for the defence.

The accused elected not to give evidence. He called two witnesses to testify on his behalf. The first was one Lim Beng Gee, a police officer who assisted in the investigation of the stabbing incident. He testified that at 12.40 am on 9 April 1985, he arrived at Blk 23, Hougang Avenue. He found some fresh blood drops on the pavement of the block and followed the blood trails into the void deck. The trail ended at a provision stall which was then closed. There was also a black and white motorcycle crash helmet near the stall. He was able to establish from the deceased's relatives that the helmet had been used by a youth in the neighbourhood. Further investigations drew a blank as to the identity of this youth. The rest of the testimony of Lim Beng Gee threw no further light whatever on the incident.

The second witness called for the defence was the accused's father. He testified that the accused and the deceased were very good friends and about a month before the incident, they both had a meal in his house. He also testified that the accused was a person of good temper with a good nature and was an obedient son. He knew of no reason why the accused would want to kill the deceased. He had never seen them quarrel. His testimony also did not throw any light on the incident.

It was further submitted that if this special exception to s 300 did not apply, then special exception 4 would apply as there was a sudden fight in which the accused had stabbed the deceased without premeditation and without having taken undue advantage or acted in a cruel or unusual manner. Finally, it was submitted that the accused had been deprived of the power of self-control by grave and sudden provocation in stabbing the deceased.

The deputy public prosecutor submitted that none of the exceptions relied upon by the accused applied to him and that the accused had not discharged the burden of circumstances bringing him within any of the statutory exceptions in accordance with s 107 of the Evidence Act. As for the right of private defence, it was submitted that even if the deceased had threatened to assault the accused, the latter had time to have recourse to the public authorities and that in any case the accused had inflicted more harm than was necessary for the purpose of defence. As for special exception 2 to s 300, it was submitted that the accused had not exercised his right of private defence in good faith as he had brought two knives to the meeting with the intention of using them and he did use them. In respect of special exception 4, that the fight was not a sudden fight and that the accused had taken undue advantage or acted in a cruel manner by using a knife and stabbing the deceased with it. Finally, it was submitted that there was no provocation or that the provocation was not grave or sudden.

It was entirely possible that the account of the incident given in the cautioned statement was accurate as to the events described therein. But it was also possible that it was not a complete account of what had happened. On the evidence adduced by the prosecution, the accused was seen chasing the deceased with a knife in his right hand. The accused was also seen to have made a motion of stabbing the deceased. This event was not recounted in the cautioned statement. Giving such weight as we could to the cautioned statement in the light of the evidence adduced by the prosecution, we were unable to conclude that the accused had discharged, on a balance of probabilities, the burden of proving any circumstances which brought him within the general exception of right of private defence under s 96 of the Penal Code or any of the special exceptions 2, 4 and 1 to s 300 of the Penal Code.

Accordingly, we convicted the accused on the charge of murder.

Accused convicted.

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